

Kevin S. Mapes
OSB #02007
kmapes@balljanik.com
Ball Janik LLP
101 SW Main Street, Suite 1100
Portland, Oregon 97204
503-228-2525 (phone)
503-295-1058 (fax)

FILED '06 JUN 21 09:28 USDC-ORP

Attorneys for Defendants Whirlpool Corporation,
Emerson Electric Co., and Emerson Appliance
Controls

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LEO AND GLORIA EBLIN, married
individuals, and BRIAN EBLIN, an
incapacitated adult, by and through his
guardians, Leo and Gloria Eblen,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a foreign
business corporation, WHIRLPOOL
CORPORATION, a foreign business
corporation, EMERSON ELECTRIC CO., a
foreign business corporation, and EMERSON
APPLIANCE CONTROLS, a foreign business,

Defendants.

CV '06 * 868 HA
CV

(Formerly Clackamas County No. CV
06050254)

NOTICE OF REMOVAL
and
DEMAND FOR JURY TRIAL

Defendants Sears, Roebuck and Co., Whirlpool Corporation, Emerson Electric Co., and Emerson Appliance Controls (collectively, "Defendants") respectfully submit this Notice of Removal of the instant case from the Circuit Court of the State of Oregon for the County of Clackamas and in support thereof state as follows:

1. Plaintiffs commenced this action in the Circuit Court of the State of Oregon for the County of Clackamas, Case No. CV 06060254. All process and pleadings served on the defendants in the state court action are attached to this Notice of Removal as Exhibit 1.

2. This Court has original jurisdiction over this matter under 28 U.S.C. § 1332 and § 1441 in that the parties have diversity of citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

3. There is complete diversity as to all parties. Plaintiffs allege that they are individuals residing at 34433 SE Brooks Road, Boring, Oregon. Complaint ¶ 2. Sears is a New York corporation with its principal place of business in Illinois. Whirlpool is a Delaware corporation with its principal place of business in Michigan. Emerson Electric Co. is a Missouri corporation with its principal place of business in Missouri. Emerson Appliance Controls is a division of Emerson Electric Co. and has its principal place of business in Missouri.

4. The amount in controversy exceeds \$75,000. Specifically, Plaintiffs seek damages of \$211,291.44. Complaint ¶¶ 28, 29.

5. Because the amount at issue exceeds \$75,000 and there is complete diversity of citizenship, this matter is within the original jurisdiction of the district court and is therefore removable. *See* 28 U.S.C. §§ 1332(a), 1441(a); *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).


6. The Complaint was served on Sears on May 24, 2006; on Whirlpool on June 5, 2006; and on Emerson Electric Co. on May 24, 2006. The Notice of Removal is being filed within 30 days after service on Defendants of Plaintiff's Complaint and is therefore timely filed. *See* 28 U.S.C. § 1446(b).

7. All named defendants join in the removal of this action.

8. Pursuant to Federal Rule of Civil Procedure 38 and L.R. 38.1, Defendants hereby demand a jury trial.

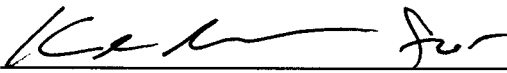
DATED this 22 day of June, 2006.

BALL JANIK LLP

By 
Kevin S. Mapes
OSB # 02007
(503) 228-2525

**Attorneys for Defendants Whirlpool
Corporation, Emerson Electric Co.,
and Emerson Appliance Controls**

SCHWABE, WILLIAMSON & WYATT PC

By 
Heidi L. Mandt
OSB # 95345
(503) 796-2835

Attorneys for Defendant Sears, Roebuck and Co.

AFFIDAVIT OF SERVICE

State of Oregon

County of Clackamas

Circuit Court

Case Number: CV06-05-0254

2006 JUN -2 PM 3:53
✓
DOCKETED BY

Plaintiff:

**Leo and Gloria Eblen and Brian Eblen, an incapacitated adult, by
and through his guardians, Leo and Gloria Eblen,**

vs.

Defendant:

Sears, Roebuck and Co., et al.,

Received by RUSH PROCESS SERVICE, INC. to be served on **SEARS ROEBUCK AND CO. % CT
Corporation System, 388 State St., Suite 420, Salem, Oregon 97301.**

I, Chris Pfeiffer, being duly sworn, depose and say that on the **24th day of May, 2006 at 1:20 pm, I:**

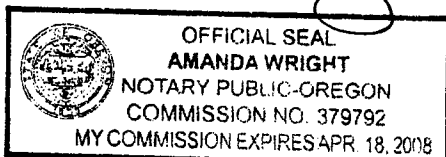
Served the within named corporation by delivering a true copy of the **Summons; Complaint** by personal service upon **Denise Whipper, Administrative Assistant** who is authorized to accept service on behalf of the registered agent.

CERTIFICATION OF MAILING: On **May 30, 2006** a true copy of the above listed documents and this Return of Service was mailed by regular U.S. Postal Service mail, first class, postage prepaid, to the address at which service was made.

I am a competent person over 18 years of age and a resident of the State of Oregon; I am not a party to nor an officer, director or employee of, nor attorney for any party. The entity/person served by me is the same entity/person named in the action.

Subscribed and Sworn to before me on the 30th day
of May, 2006.

Amanda Wright
NOTARY PUBLIC



Chris Pfeiffer
Chris Pfeiffer
Process Server

**RUSH PROCESS SERVICE, INC.
2014 N.E. Sandy Blvd., Suite 204
Portland, OR 97232
(503) 232-3667**

Our Job Serial Number: 2006009290
Ref: Eblen/Sears

2006 JUN -2 PM 6:53
✓
DOCKETED BY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

LEO AND GLORIA EBLEN, married individuals,)
and BRIAN EBLEN, an incapacitated adult, by and)
through his guardians, Leo and Gloria Eblen,)

Plaintiffs,)

vs.)

SEARS, ROEBUCK AND CO., a foreign business)
corporation, WHIRLPOOL CORPORATION, a)
foreign business corporation, EMERSON)
ELECTRIC CO., a foreign business corporation,)
and EMERSON APPLIANCE CONTROLS, a)
foreign business,)

Defendants.)

Case No. CV 06050254

SUMMONS

TO: Sears, Roebuck and Co.
c/o C T Corporation System
388 State St., Suite 420
Salem, OR 97301

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and defend the Complaint filed against you in the above-entitled cause within 30 days from the date of service of this Summons on you; and if you fail to appear and defend, the Plaintiff will apply to the court for the relief demanded in the Complaint.

NOTICE TO RESPONDENT:
READ THESE PAPERS CAREFULLY

1 You must "appear" in this case or the other side will win automatically. To "appear" you must
 2 file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be
 3 given to the court clerk or administrator within 30 days along with the required filing fee. It must be
 4 in proper form and have proof of service on the Plaintiff's attorney or, if the Plaintiff does not have
 5 an attorney, proof of service on the Plaintiff.

6 If you have any questions, you should see an attorney immediately. If you need help in
 7 finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763
 8 or toll-free in Oregon at (800) 452-7636.

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Timothy L. Murphy, OSB #00334
 714 SW 20th Place
 Portland, OR 97205
 (503) 422-3307 phone
 (503) 274-7975 fax

STATE OF OREGON)
) ss.
 COUNTY OF Multnomah)

I, the undersigned attorney of record for the plaintiff certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

Timothy L. Murphy, OSB #00334

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

Timothy L. Murphy, OSB #00334

AFFIDAVIT OF SERVICE

State of Oregon

County of Clackamas

Circuit Court

Case Number: CV06-05-0254

Plaintiff:

**Leo and Gloria Eblen and Brian Eblen, an incapacitated adult, by
and through his guardians, Leo and Gloria Eblen,**

vs.

Defendant:

Sears, Roebuck and Co., et al.,

2006 JUN -2 PM 3:59
DOCKETED BY

Received by RUSH PROCESS SERVICE, INC. to be served on **EMERSON ELECTRIC CO. % CT
Corporation System, 388 State St., Suite 420, Salem, Oregon 97301.**

I, Chris Pfeiffer, being duly sworn, depose and say that on the **24th day of May, 2006** at **1:20 pm, I:**

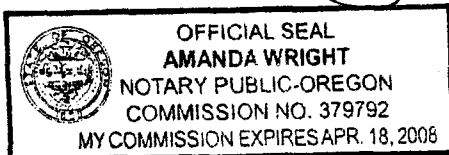
Served the within named corporation by delivering a true copy of the **Summons; Complaint** by personal service upon **Denise Whipper, Administrative Assistant** who is authorized to accept service on behalf of the registered agent.

CERTIFICATION OF MAILING: On **May 30, 2006** a true copy of the above listed documents and this Return of Service was mailed by regular U.S. Postal Service mail, first class, postage prepaid, to the address at which service was made.

I am a competent person over 18 years of age and a resident of the State of Oregon; I am not a party to nor an officer, director or employee of, nor attorney for any party. The entity/person served by me is the same entity/person named in the action.

Subscribed and Sworn to before me on the 30th day
of May, 2006.

Amanda Wright
NOTARY PUBLIC



Chris Pfeiffer
Chris Pfeiffer
Process Server

**RUSH PROCESS SERVICE, INC.
2014 N.E. Sandy Blvd., Suite 204
Portland, OR 97232
(503) 232-3667**

Our Job Serial Number: 2006009293
Ref: Eblen/Sears

RECEIVED

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**
05/24/2006
Log Number 511185016

MAY 26 2006

LAW DEPT.

TO: Michael Keating, Attorney
Emerson Electric Co.
8000 West Florissant Avenue
Saint Louis, MO, 63136

RE: Process Served in Oregon

FOR: Emerson Electric Co. (Domestic State: MO)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Leo and Gloria Eblen, and Brian Eblen, by and through his guardiansm Leo and Gloria Eblen, Pltf. vs. Sears, Roebuck and Co., et al including Emerson Electric Co., Dfts.

DOCUMENT(S) SERVED: Summons, Complaint

COURT/AGENCY: Clackamas County Circuit Court, OR
Case # CV06050254

NATURE OF ACTION: Product Liability Litigation - Manufacturing Defect - Breach of Warranty on a Whirlpool washer, control board mfg. by Emerson-DOA: 5/24/04. Seeking \$211,291.44

ON WHOM PROCESS WAS SERVED: C T Corporation System, Salem, OR

DATE AND HOUR OF SERVICE: By Process Server on 05/24/2006 at 13:20

APPEARANCE OR ANSWER DUE: 30 Days

ATTORNEY(S) / SENDER(S): Timothy L Murphy
714 SW 20th Pl
Portland, OR, 97205
503.422.3307

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day, 791493923328
Email Notification, Kim Olmstead kim.olmstead@emrsn.com

SIGNED: C T Corporation System
PER: Patricia McGriff
ADDRESS: CT Corporation System
388 State Street, Suite 420
Salem, OR, 97301
TELEPHONE: 503-566-6883

Page 1 of 1 / PM

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of the package only, not of its contents.

EX. 1 PP. 5 OF 23

2016 JUN -2 PM 2:59

FILED

DOCKETED BY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

LEO AND GLORIA EBLEN, married individuals,)
and BRIAN EBLEN, an incapacitated adult, by and)
through his guardians, Leo and Gloria Eblen,)

Plaintiffs,)

vs.)

SEARS, ROEBUCK AND CO., a foreign business)
corporation, WHIRLPOOL CORPORATION, a)
foreign business corporation, EMERSON)
ELECTRIC CO., a foreign business corporation,)
and EMERSON APPLIANCE CONTROLS, a)
foreign business,)

Defendants.)

Case No. CV 06050254

SUMMONS

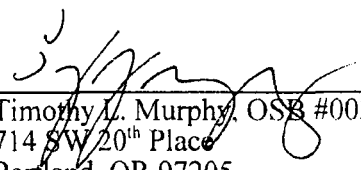
TO: Emerson Electric Co.
c/o C T Corporation System
388 State St., Suite 420
Salem, OR 97301

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and defend the Complaint filed against you in the above-entitled cause within 30 days from the date of service of this Summons on you; and if you fail to appear and defend, the Plaintiff will apply to the court for the relief demanded in the Complaint.

NOTICE TO RESPONDENT:
READ THESE PAPERS CAREFULLY

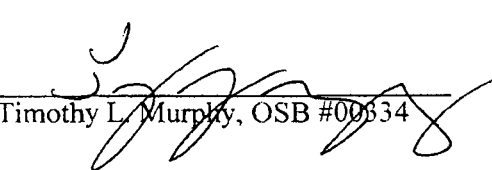
1 You must "appear" in this case or the other side will win automatically. To "appear" you must
 2 file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be
 3 given to the court clerk or administrator within 30 days along with the required filing fee. It must be
 4 in proper form and have proof of service on the Plaintiff's attorney or, if the Plaintiff does not have
 5 an attorney, proof of service on the Plaintiff.

6 If you have any questions, you should see an attorney immediately. If you need help in
 7 finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763
 8 or toll-free in Oregon at (800) 452-7636.

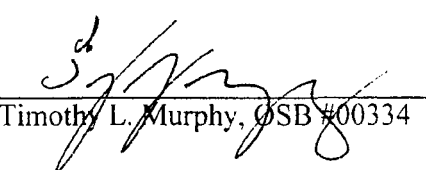
9 
 10 Timothy L. Murphy, OSB #00334
 714 SW 20th Place
 Portland, OR 97205
 (503) 422-3307 phone
 (503) 274-7975 fax

11 STATE OF OREGON)
 12) ss.
 13 COUNTY OF Multnomah)

14 I, the undersigned attorney of record for the plaintiff certify that the foregoing is an exact and
 15 complete copy of the original summons in the above entitled action.

16 
 17 Timothy L. Murphy, OSB #00334

18 TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby
 19 directed to serve a true copy of this summons, together with a true copy of the complaint mentioned
 20 therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed,
 21 and to make your proof of service on the reverse hereof or upon a separate similar document which
 22 you shall attach hereto.

23 
 24 Timothy L. Murphy, OSB #00334

AFFIDAVIT OF SERVICE

State of Oregon

County of Clackamas

Circuit Court

Case Number: CV06-05-0254

Plaintiff:

**Leo and Gloria Eblen and Brian Eblen, an incapacitated adult, by
and through his guardians, Leo and Gloria Eblen,**

vs.

Defendant:

Sears, Roebuck and Co., et al.,

Received by RUSH PROCESS SERVICE, INC. to be served on **WHIRLPOOL CORPORATION % CT
Corporation System, 388 State St., Suite 420, Salem, Oregon 97301.**

I, Chris Pfeiffer, being duly sworn, depose and say that on the **24th day of May, 2006 at 1:20 pm, I:**

Served the within named corporation by delivering a true copy of the **Summons; Complaint** by personal service upon **Denise Whipper, Administrative Assistant** who is authorized to accept service on behalf of the registered agent.

CERTIFICATION OF MAILING: On **May 30, 2006** a true copy of the above listed documents and this Return of Service was mailed by regular U.S. Postal Service mail, first class, postage prepaid, to the address at which service was made.

I am a competent person over 18 years of age and a resident of the State of Oregon; I am not a party to nor an officer, director or employee of, nor attorney for any party. The entity/person served by me is the same entity/person named in the action.

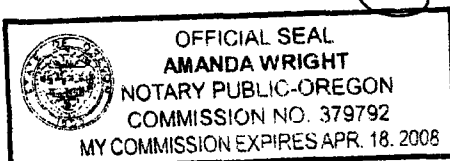
Subscribed and Sworn to before me on the 30th day
of May, 2006.


NOTARY PUBLIC


Chris Pfeiffer
Process Server

**RUSH PROCESS SERVICE, INC.
2014 N.E. Sandy Blvd., Suite 204
Portland, OR 97232
(503) 232-3667**

Our Job Serial Number: 2006009291
Ref: Eblen/Sears



2006 JUN -2 11:01 AM
DOCKETED BY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

LEO AND GLORIA EBLEN, married individuals,)
and BRIAN EBLEN, an incapacitated adult, by and)
through his guardians, Leo and Gloria Eblen,)

Plaintiffs,)

vs.)

SEARS, ROEBUCK AND CO., a foreign business)
corporation, WHIRLPOOL CORPORATION, a)
foreign business corporation, EMERSON)
ELECTRIC CO., a foreign business corporation,)
and EMERSON APPLIANCE CONTROLS, a)
foreign business,)

Defendants.)

Case No. CV 06050254

SUMMONS

TO: Whirlpool Corporation
c/o C T Corporation System
388 State St., Suite 420
Salem, OR 97301

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and defend the Complaint filed against you in the above-entitled cause within 30 days from the date of service of this Summons on you; and if you fail to appear and defend, the Plaintiff will apply to the court for the relief demanded in the Complaint.

NOTICE TO RESPONDENT:
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 2 file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be
 3 given to the court clerk or administrator within 30 days along with the required filing fee. It must be
 4 in proper form and have proof of service on the Plaintiff's attorney or, if the Plaintiff does not have
 5 an attorney, proof of service on the Plaintiff.

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Timothy L. Murphy, OSB #00334
 714 SW 20th Place
 Portland, OR 97205
 (503) 422-3307 phone
 (503) 274-7975 fax

STATE OF OREGON)
) ss.
 COUNTY OF Multnomah)

I, the undersigned attorney of record for the plaintiff certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

Timothy L. Murphy, OSB #00334

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

Timothy L. Murphy, OSB #00334

STATE OF OREGON
CLACKAMAS COUNTY COURT
FILED

06 MAY 10 2006
ENTERED MAY 10 2006
DOCKETED BY: KAJ

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

LEO AND GLORIA EBLEN, married individuals,)
and BRIAN EBLEN, an incapacitated adult, by and)
through his guardians, Leo and Gloria Eblen,)

Plaintiffs,)

vs.)

SEARS, ROEBUCK AND CO., a foreign business)
corporation, WHIRLPOOL CORPORATION, a)
foreign business corporation, EMERSON)
ELECTRIC CO., a foreign business corporation,)
and EMERSON APPLIANCE CONTROLS, a)
foreign business,)

Defendants.)

CV 06050254

Case No.

COMPLAINT
(Products Liability, Negligence,
Breach of Warranty)

Claim Not Subject to Mandatory
Arbitration

Claim for More than \$50,000

Request for Jury Trial

Come now Plaintiffs who allege as follows:

1.

At all material times herein, Plaintiffs were individuals residing at 34433 SE Brooks Rd.,
Boring OR 97009 in the County of Clackamas.

2.

Plaintiffs Leo and Gloria Eblen are the legal guardians of Brian Eblen, who is an
incapacitated, bedridden adult with cerebral palsy.

1 3.

2 An Order Approving Guardianship of Plaintiff Brian Eblen to Plaintiffs Leo and Gloria Eblen
3 was issued on January 21, 1999 in Clackamas County Case No. P980959.

4 4.

5 At all material times herein, Defendant Sears, Roebuck and Co. ("Defendant Sears") was a
6 foreign business corporation that was doing business in Oregon. Defendant Sears, Roebuck and Co.
7 sold to Plaintiffs and installed for Plaintiffs a clothes washing machine ("washer") that was
8 defective, overflowed on May 10, 2004 and May 24, 2004 and caused extensive water damage to
9 Plaintiff's residence on, about and after those dates.

10 5.

11 At all material times herein, Defendant Whirlpool Corporate ("Defendant Whirlpool") was
12 a foreign business corporation that was doing business in Oregon. Defendant Whirlpool Corporate
13 manufactured the washer that was defective, overflowed on May 10, 2004 and May 24, 2004 and
14 caused extensive water damage to Plaintiff's residence on, about and after those dates.

15 6.

16 At all material times herein, Defendants Emerson Electric Co. and Emerson Appliance
17 Controls ("Defendants Emerson") were foreign business corporations doing business in Oregon.
18 Defendants Emerson Electric Co. and Emerson Appliance Controls manufactured the temperature
19 control board and overflow monitor that malfunctioned within the washer that was defective,
20 overflowed on May 10, 2004 and May 24, 2004 and caused extensive water damage to Plaintiff's
21 residence on, about and after those dates.

22 7.

23 Plaintiffs purchased the washer from Defendant Sears on March 22, 2004. Immediately
24 thereafter, Defendant Sears installed the washer at Plaintiffs' residence.

25 8.

26 The washer was manufactured by Defendant Whirlpool.

1 9.

2 The washer included a temperature control board and overflow monitor that was
3 manufactured by Defendant Emersons.

4 10.

5 The washer was manufactured and packaged by Defendant Whirlpool, distributed and sold
6 by Defendant Sears and included a temperature control board and overflow monitor from Defendants
7 Emerson and it was sold to Plaintiffs and was installed in Plaintiffs' residence without substantial
8 change in the washer's condition from when it left each Defendant's control.

9 11.

10 Defendant Sears, Defendant Whirlpool and Defendants Emerson each manufactured, in part
11 or in whole, packaged, distributed or sold the washer, are in the business of manufacturing, in part
12 or in whole, packaging, distributing or selling washers and placed the washer on the market with the
13 reasonable expectation that it would be used to launder clothes.

14 12.

15 Plaintiff Gloria Eblen used the washer to launder clothes in a normal and foreseeable manner
16 on May 10, 2004 and May 24, 2004. On each of those dates, the washer overflowed and caused
17 extensive water damage to Plaintiffs' residence, as well as resultant mold.

18 13.

19 Immediately after each malfunction on May 10, 2004 and May 24, 2004 and repeatedly
20 thereafter, Plaintiffs notified Defendants of the washer malfunction, water damage and mold
21 contamination. Defendants took no actions to repair or remediate the water damage or mold
22 contamination for roughly six months, during which time mold flourished throughout Plaintiffs'
23 residence and water damage became more extensive.

24 14.

25 After Plaintiffs notified Defendants of the malfunction on May 10, 2004 and May 24, 2004,
26 Defendants had numerous inspectors and contractors visit Plaintiffs' residence and assess the water
damage and mold contamination. Defendants did not authorize any contractor or inspector to repair

1 or remediate the water damage or mold contamination, despite repeatedly representing to Plaintiffs
2 that they would do so and despite each contractor or inspector confirming that extensive water
3 damage and mold contamination existed.

4 15.

5 Plaintiffs were instructed by Defendants and the inspectors and contractors to take numerous
6 measures to mitigate the water damage and mold contamination, including sealing the contaminated
7 area with plastic sheeting and forgoing the use of heat/air conditioning due to mold within the ducts,
8 and Plaintiffs performed each requested mitigation measure.

9 16.

10 The water damage caused extensive damage to walls and flooring in the laundry room,
11 kitchen/dining room, hall, living room and bedroom, as well as to the crawl space, attic, ducts and
12 furnace. The water damage resulted in extensive home repairs, water damage repairs, mold
13 remediation and relocation of Plaintiffs' to another home for roughly one month while repairs were
14 completed.

15 17.

16 On or about February 18, 2005, Defendant Sears, through its insurer, made an advance
17 payment, as described under ORS 31.550 and 31.565, of \$55,694.75 for water damage repairs and
18 mold remediation to Plaintiffs' residence. Defendants did not mail or otherwise give to each or any
19 Plaintiff, within 30 days of the advance payment or ever, written notice of the date of expiration of
20 the period of limitation for the commencement of an action for damages set by any applicable statute
21 of limitations.

22 18.

23 As a result of the water damage, mold flourished throughout Plaintiffs' residence for at least
24 six months. As a result of mold contamination throughout Plaintiffs' residence, Brian Eblen suffered
25 from severe respiratory distress that required and resulted in two separate hospital visits and
26 overnight stays. The first visit was required to address severe respiratory distress and the second
visit was required to address medicine/prescription complications from the first visit.

19.

First Claim for Relief

Products Liability

Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 to 18.

20.

The washer, which was manufactured and packaged by Defendant Whirlpool, distributed and sold by Defendant Sears and included a temperature control board and overflow monitor from Defendants Emerson, had manufacturing and design flaws, was defective and failed to conform to the design specifications of Defendants.

21.

As a result of the washer's manufacturing and design flaws, defective condition and failure to conform to the design specifications of Defendants, the product was in defective condition at the time of sale and installation. The condition of the product was defective, unreasonable, dangerous and unfit to launder clothes.

22.

As a direct and proximate result of Defendants providing Plaintiffs with a washer that was defective, unreasonable, dangerous and unfit to launder clothes, Plaintiffs were injured and suffered \$200,000 in general damages to their residence or an amount to be proven at trial, less any advance payments from Defendants or their insurers.

23.

As a direct and proximate result of Defendants providing Plaintiffs with a washer that was defective, unreasonable, dangerous and unfit to launder clothes, Plaintiff Brian Eblen was injured and suffered \$11,291.44 in medical expenses or an amount to be proven at trial.

24.

As a direct and proximate result of Defendants providing Plaintiffs with a washer that was defective, unreasonable, dangerous and unfit to launder clothes, Plaintiffs suffered physical and emotional damages and injury, including respiratory problems, medicine/prescription complications,

1 coughing, sleeplessness, discomfort due to the inability to use the furnace or air conditioning,
2 malaise, emotional distress, inconvenience, anxiety and exhaustion, in an amount equal to \$300,000
3 or an amount to be proven at trial.

4 25.

5 **Second Claim for Relief**

6 **Negligence**

7 Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 to 18.

8 26.

9 Defendants owe a duty, including a duty of reasonable care, to the customers who purchase
10 washers intended for ordinary consumer use and laundering clothes.

11 27.

12 The direct and proximate cause of the injuries to Plaintiff was the negligence of Defendants
13 and Defendants breach of its duty to Plaintiffs in one or more of the following particulars:

- 14 a) In failing to properly inspect or test the washer before placing it on the market;
15 b) In failing to properly manufacture the washer before placing it on the market;
16 c) In failing to properly design the washer before placing it on the market;
17 d) In failing to take reasonable precautions to prevent the washer from harming
18 Plaintiffs or Plaintiffs' residence;
19 e) In failing to properly install Defendant Emersons' temperature control board and
20 overflow monitor in the washer;
21 f) In failing to immediately repair or remediate water damage to Plaintiffs' residence;
22 g) By repeatedly representing to Plaintiffs that Defendants would forthwith repair the
23 water damage and remediate the mold contamination without actually doing so.

24 28.

25 As a direct and proximate result of Defendants' negligence and its breach of duty to
26 Plaintiffs, Plaintiffs were injured and suffered \$200,000 in general damages to their residence or an
amount to be proven at trial, less any advance payments from Defendants or their insurers.

1 29.

2 As a direct and proximate result of Defendants' negligence and its breach of duty to
3 Plaintiffs, Plaintiff Brian Eblen was injured and suffered \$11,291.44 in medical expenses or an
4 amount to be proven at trial.

5 30.

6 As a direct and proximate result of Defendants' negligence and its breach of duty to
7 Plaintiffs, Plaintiffs suffered physical and emotional damages and injury, including respiratory
8 problems, medicine/prescription complications, coughing, sleeplessness, discomfort due to the
9 inability to use the furnace or air conditioning, malaise, emotional distress, inconvenience, anxiety
10 and exhaustion, in an amount equal to \$300,000 or an amount to be proven at trial.

11 31.

12 **Third Claim for Relief**

13 **Breach of Warranty**

14 Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 to 18.

15 32.

16 Defendants are merchants of consumer goods and deal in washers, including the washer at
17 issue, and have knowledge and skill with washers.

18 33.

19 Defendants are in privity with Plaintiffs, who were intended consumers and who paid
20 valuable consideration for the washer that was manufactured, packaged, distributed and sold by
21 Defendants.

22 34.

23 Plaintiffs notified Defendants of their washer malfunction and property damage immediately
24 after discovery of the malfunction and property damage.

25 ///

26 ///

35.

As a direct and proximate result of Defendants committing a breach of warranty, Plaintiffs were injured and suffered \$200,000 in general damages to their residence or an amount to be proven at trial, less any advance payments from Defendants or their insurers.

36.

As a direct and proximate result of Defendants committing a breach of warranty, Plaintiff Brian Eblen was injured and suffered \$11,291.44 in medical expenses or an amount to be proven at trial.

37.

As a direct and proximate result of Defendants committing a breach of warranty, Plaintiffs suffered physical and emotional damages and injury, including respiratory problems, medicine/prescription complications, coughing, sleeplessness, discomfort due to the inability to use the furnace or air conditioning, malaise, emotional distress, inconvenience, anxiety and exhaustion, in an amount equal to \$300,000 or an amount to be proven at trial.

38.

Plaintiffs are entitled to their reasonable attorney fees and costs under 15 U.S.C. § 2310(d)(2).

39.

First Cause of Action - Breach of Implied Warranty of Merchantability

Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 to 18 and 32 to 38.

40.

Defendants warranted to Plaintiffs that the washer was of a quality that would pass without objection in the trade, was fit for the ordinary purpose for which the washer was used, which was laundering clothes, and was of merchantable quality.

41.

The washer purchased by Plaintiffs was unfit for its ordinary purpose of laundering clothes and was unmerchantable.

1 42.

2 Plaintiffs relied on Defendants' warranty and would not have purchased or used the washer
3 had they known it was not of merchantable quality and was unfit for the ordinary use of laundering
4 clothes.

5 43.

6 Defendants' breach of the warranty of merchantability was the direct and proximate cause
7 of the extensive water damage to Plaintiffs' residence, as well as resultant mold contamination,
8 which resulted in physical and emotional damages to Plaintiffs and damage to Plaintiffs' residence.

9 44.

10 Second Cause of Action - Breach of Implied Warranty of Fitness for a Particular Purpose

11 Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 to 18 and 32 to
12 38.

13 45.

14 Defendants warranted to Plaintiffs that the washer was fit for the particular purpose of
15 laundering clothes.

16 46.

17 The washer manufactured and sold by Defendants to Plaintiffs and installed by Defendant
18 Sears was not fit for laundering clothes.

19 47.

20 Plaintiffs relied on Defendants' skill and judgment to furnish a suitable washer for Plaintiffs'
21 particular purpose of laundering clothes.

22 48.

23 Defendants, by their position as suppliers of quality consumer goods, had reason to know that
24 Plaintiffs needed a washer fit for the particular purpose of laundering clothes and had reason to know
25 that Plaintiffs would rely on Defendants' skill and judgment to furnish a suitable washer for
26 Plaintiffs particular purpose of laundering clothes.

1 49.

2 Defendants' breach of the warranty of fitness for a particular purpose was the direct and
3 proximate cause of the extensive water damage to Plaintiffs' residence, as well as resultant mold
4 contamination, which resulted in physical and emotional damages to Plaintiffs and damage to
5 Plaintiffs' residence.

6 50.

7 Third Cause of Action - Breach of Express Warranty

8 Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 to 18 and 32 to
9 38.

10 51.

11 Through explicit factual statements, a description of the washer and information contained
12 within the product manual, Defendants expressly stated to Plaintiffs that the washer would launder
13 clothes effectively and function properly.

14 52.

15 Defendants used a model washer to advertise the washer and stated that the washer would
16 conform to the model, which would launder clothes effectively and function properly.

17 53.

18 Plaintiff relied on the factual statements, descriptions, information and model described in
19 paragraph 51 and 52 and the factual statements, descriptions, information and model were a basis
20 of the bargain between Plaintiffs and Defendants.

21 54.

22 Defendants breached the express warranty by providing a washer that failed to launder
23 clothes effectively and function properly, which is contrary to Defendants' factual statements,
24 descriptions, information and model.

25 ///

26 ///

55.

Defendants' breach of the express warranty was the direct and proximate cause of the extensive water damage to Plaintiffs' residence, as well as resultant mold contamination, which resulted in physical and emotional damages to Plaintiffs and damage to Plaintiffs' residence.

WHEREFORE, Plaintiff prays for a judgment as follows:

1. For Plaintiff's First Claim for Relief for products liability, against Defendants Sears, Whirlpool and Emerson, jointly and severally,
 - a. For general damages, in the amount of \$200,000 or an amount to be proven at trial, less any advance payment from Defendants or their insurers;
 - b. For medical expenses, in the amount of \$11,291.44 or an amount to be proven at trial; and
 - c. For physical and emotional damages and injury, including respiratory problems, medicine/prescription complications, coughing, sleeplessness, discomfort due to the inability to use the furnace or air conditioning, malaise, emotional distress, inconvenience, anxiety and exhaustion, in an amount equal to \$300,000 or an amount to be proven at trial; or
2. For Plaintiffs' Second Claim for Relief for negligence, against Defendants Sears, Whirlpool and Emerson, jointly and severally,
 - a. For general damages, in the amount of \$200,000 or an amount to be proven at trial, less any advance payment from Defendants or their insurers;
 - b. For medical expenses, in the amount of \$11,291.44 or an amount to be proven at trial; and
 - c. For physical and emotional damages and injury, including respiratory problems, medicine/prescription complications, coughing, sleeplessness, discomfort due to the inability to use the furnace or air conditioning, malaise, emotional distress, inconvenience, anxiety and exhaustion, in an amount

1 equal to \$300,000 or an amount to be proven at trial; or

2 3. For Plaintiffs' Third Claim for Relief for breach of warranty, against Defendants
3 Sears, Whirlpool and Emerson, jointly and severally.

4 i. For breach of the implied warranty of merchantability

5 a. For general damages, in the amount of \$200,000 or an amount to be
6 proven at trial, less any advance payment from Defendants or their
7 insurers;

8 b. For medical expenses, in the amount of \$11,291.44 or an amount to
9 be proven at trial; and

10 c. For physical and emotional damages and injury, including respiratory
11 problems, medicine/prescription complications, coughing,
12 sleeplessness, discomfort due to the inability to use the furnace or air
13 conditioning, malaise, emotional distress, inconvenience, anxiety and
14 exhaustion, in an amount equal to \$300,000 or an amount to be
15 proven at trial; and

16 d. For Plaintiffs' reasonable attorney fees and costs; or

17 ii. For breach of the implied warranty of fitness for a particular purpose

18 a. For general damages, in the amount of \$200,000 or an amount to be
19 proven at trial, less any advance payment from Defendants or their
20 insurers;

21 b. For medical expenses, in the amount of \$11,291.44 or an amount to
22 be proven at trial; and

23 c. For physical and emotional damages and injury, including respiratory
24 problems, medicine/prescription complications, coughing,
25 sleeplessness, discomfort due to the inability to use the furnace or air
26 conditioning, malaise, emotional distress, inconvenience, anxiety and
exhaustion, in an amount equal to \$300,000 or an amount to be

1 proven at trial; and

2 d. For Plaintiffs' reasonable attorney fees and costs; or

3 ii. For breach of express warranties

4 a. For general damages, in the amount of \$200,000 or an amount to be
5 proven at trial, less any advance payment from Defendants or their
6 insurers;

7 b. For medical expenses, in the amount of \$11,291.44 or an amount to
8 be proven at trial; and

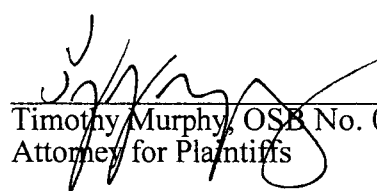
9 c. For physical and emotional damages and injury, including respiratory
10 problems, medicine/prescription complications, coughing,
11 sleeplessness, discomfort due to the inability to use the furnace or air
12 conditioning, malaise, emotional distress, inconvenience, anxiety and
13 exhaustion, in an amount equal to \$300,000 or an amount to be
14 proven at trial; and

15 d. For Plaintiffs' reasonable attorney fees and costs; and

16 3. For Plaintiff's costs and disbursements incurred herein; and

17 4. Any other relief the Court deems just and proper.

18
19 DATED this Wednesday, May 10, 2006.

20
21 
22 Timothy L. Murphy, OSB No. 00334
23 Attorney for Plaintiffs

24 I hereby certify that the above Complaint is a true copy of the original filed/submitted by
25 mailing with the Court.
26

Timothy L. Murphy, OSB No. 00334
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF REMOVAL** was served upon:


Timothy L. Murphy
Attorney at Law
714 SW 20th Place
Portland, OR 97205
Attorney for Plaintiffs

Heidi L. Mandt
Schwabe Williamson & Wyatt PC
1211 SW Fifth Avenue, Suite 1900
Portland, OR 97204
Attorney for Defendant Sears, Roebuck and Co.

by causing the service copy to be mailed, via First Class Mail, postage prepaid, addressed to the attorneys' last known addresses, indicated above.

DATED this 21 day of June, 2006.

BALL JANIK LLP



Annie LaHaie, Legal Assistant